

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-026-02-1-5-00770
Petitioner: Frank Sostaric, Sr.
Respondent: Department of Local Government Finance
Parcel #: 007-26-32-0182-0001
Assessment Year: 2002

The Indiana Board of Tax Review (the Board) issues this determination in the above matter, and finds and concludes as follows:

Procedural History

1. The Department of Local Government Finance (the DLGF) determined that the Petitioner's property tax assessment for the subject property was \$100,900 and notified the Petitioner by an administrative correction.
2. The Petitioner filed a Form 139L on April 16, 2004.
3. The Board issued a notice of hearing to the parties dated October 29, 2004.
4. Special Master S. Sue Mayes held the hearing in Crown Point on December 2, 2004.

Facts

5. The subject property is located at 7019 Woodlawn Avenue, Hammond. The location is in North Township.
6. The subject property is a single-family dwelling located on a 40 by 147 foot parcel.
7. The Special Master did not conduct an on-site visit of the property.
8. Assessed value of the subject property as determined by the DLGF:
Land \$11,000 Improvements \$89,900 Total \$100,900.
9. Assessed value requested by Petitioner:
Land \$11,000 Improvements \$64,000 Total \$75,000.

10. Persons sworn in as witnesses at the hearing:
Frank Sostaric, Owner
Cheryl Sostaric, Daughter-in-law of owner
Tommy P. Bennington, Assessor/Auditor, DLGF.

Issue

11. Summary of Petitioner's contentions in support of an alleged error in the assessment:
The value of the house is overstated because the property record card shows 1957 as the year of construction for the house. The house was built in 1926 and has never been remodeled. *Petitioner Exhibits 3-23; F. Sostaric testimony.*
12. Summary of Respondent's contentions in support of the assessment:
Some research was done on houses in that area. Some of the houses were built in the 50s and some were built in the 20s. *Bennington testimony.*

Record

13. The official record for this matter is made up of the following:
 - a. The Petition,
 - b. The tape recording of the hearing labeled Lake Co. 910,
 - c. Exhibits:
 - Petitioner Exhibit 1: Form 139L Petition,
 - Petitioner Exhibit 2: Summary of Petitioner's arguments,
 - Petitioner Exhibit 3: Written outline of evidence,
 - Petitioner Exhibit 4: Abstract of title 3/24/1853 - 3/31/1926, pg.11,
 - Petitioner Exhibit 5: Abstract of title 3/31/1926 - 9/1/1928, pg.2,
 - Petitioner Exhibit 6: Abstract of title 9/1/1928 - 4/14/1933, pg.1,
 - Petitioner Exhibit 7: Abstract of title 9/1/1928 - 4/14/1933, pg.2,
 - Petitioner Exhibit 8: Abstract of title 9/1/1928 - 4/14/1933, pg.4,
 - Petitioner Exhibit 9: Abstract of title 4/14/1933 - 4/15/1935, pg.8,
 - Petitioner Exhibit 10: Abstract of title 4/14/1933 - 4/15/1935, pg.16,
 - Petitioner Exhibit 11: Abstract of title 4/14/1933 - 4/15/1935, pg.20,
 - Petitioner Exhibit 12: Abstract of title 4/15/1935 - 5/19/1936, pg.1,
 - Petitioner Exhibit 13: Abstract of title 4/15/1935 - 5/19/1936, pg.2,
 - Petitioner Exhibit 14: Abstract of title since 5/19/1936, pg.5,
 - Petitioner Exhibit 15: Warranty Deed dated 10/16/1943,
 - Petitioner Exhibit 16: Warranty Deed dated 5/25/1961,
 - Petitioner Exhibit 17: Release of Mortgage dated 4/25/1951,
 - Petitioner Exhibit 18: Proposition for Sale dated 9/4/1943,
 - Petitioner Exhibit 19: Notice of assessment dated 3/1/1950,
 - Petitioner Exhibit 20: Notice of Assessment dated 4/2/1969,
 - Petitioner Exhibit 21: Notice of Assessment dated 6/14/1996,
 - Petitioner Exhibit 22: Subject property record card, 1995,
 - Petitioner Exhibit 23: Subject property record card 2001,

- Respondent Exhibit 1: Form 139L,
 - Respondent Exhibit 2: Subject property record card,
 - Respondent Exhibit 3: Photograph of the subject property,
 - Board Exhibit A: Form 139 L,
 - Board Exhibit B: Notice of Hearing,
 - Board Exhibit C: Sign-in sheet,
- d. These Findings and Conclusions.

Analysis

14. The most applicable governing cases are:
- a. A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving that the current assessment is incorrect, and specifically what the correct assessment would be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
 - b. In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer’s duty to walk the Indiana Board . . . through every element of the analysis”).
 - c. Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner’s evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner’s evidence. *Id: Meridian Towers*, 805 N.E.2d at 479.
15. The Petitioner provided sufficient evidence to support his contention that the year of construction is erroneous. This conclusion was arrived at because:
- a. The Petitioner provided substantial probative evidence to establish a prima facie case that the year of construction for the subject property is 1926, not 1957 as indicated on the property record card.
 - b. The property record card should be changed to indicate 1926 as the year of construction. This will, of necessity, dictate a change in the percentage of depreciation applied.
 - c. Petitioner presented no market value data to support his requested assessed value. Petitioner has failed to make a prima facie for his proposed value of \$75,000.
 - d. Where the Petitioner has not supported the claim with probative evidence, the Respondent’s duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. V. Dep’t of Gov’t Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

16. The Petitioner made a prima facie case regarding the year of construction of the dwelling. The property record card should be changed to indicate 1926 as the year of construction

and the change in depreciation made. The Board finds in favor of the Petitioner on the year of construction issue.

17. The Petitioner failed to make a prima facie case establishing a market value-in-use of \$75,000. The Board finds in favor of the Respondent.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should be changed.

ISSUED: _____

Commissioner,
Indiana Board of Tax Review

IMPORTANT NOTICE

- APPEAL RIGHTS -

You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code § 6-1.1-15-5. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. You must name in the petition and in the petition's caption the persons who were parties to any proceeding that led to the agency action under Indiana Tax Court Rule 4(B)(2), Indiana Trial Rule 10 (A), and Indiana Code §§ 4-21.5-5-7 (b)(4), 6-1.1-15-5 (b). The Tax Court Rules provide a sample petition for judicial review. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Trial Rules are available on the Internet at http://www.in.gov/judiciary/rules/trial_proc/inde.html. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.